

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

JOHNNY GONZALES,	)	CASE NO: 2:15-CV-00065
	)	
Plaintiff,	)	CIVIL
	)	
vs.	)	Corpus Christi, Texas
	)	
PIPE PROS, LLC,	)	Friday, August 14, 2015
	)	
<u>Defendant.</u>	)	(9:58 a.m. to 10:49 a.m.)

CLASS CERTIFICATION HEARING

BEFORE THE HONORABLE NELVA GONZALES RAMOS,  
UNITED STATES DISTRICT JUDGE

APPEARANCES:	See page 2
Court Recorder:	Genay Rogan
Clerk:	Brandy Cortez
Court Security Officer:	Armando Ayala
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**For Defendant:**

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**Also present:**

GARY EDWARDS, Owner of Pipe Pros, LLC

1        Corpus Christi, Texas; Friday, August 14, 2015; 9:58 a.m.

2                                (Call to Order)

3                **THE COURT:** Court calls Cause Number 2:15-CV-65,  
4 *Gonzales v. Pipe Pros.*

5                Plaintiff will announce for the record.

6                **MR. ALEXANDER:** Good morning, your Honor. Clif  
7 Alexander and Timothy Raub for Mr. Gonzales.

8                **MR. PIPITONE:** Good morning, Judge. I'm Dan Pipitone  
9 for Pipe Pros. Also with me is my partner, Michael Harvey.  
10 And I also have with me Gary Edwards, who is one of the owners  
11 of Pipe Pros.

12                **MR. EDWARDS:** Good morning.

13                **THE COURT:** Good morning.

14                All right, we're here on Plaintiff's Motion to  
15 Certify the Action.

16                Do you want to proceed?

17                **MR. ALEXANDER:** Yes, your Honor. May I approach the  
18 podium?

19                **THE COURT:** Yes.

20                **MR. ALEXANDER:** Your Honor, I think the Court's full  
21 aware of the exercise here today of conditional certification.  
22 We're at the notice stage, the first stage of the conditional  
23 certification process, and, you know, what does that mean?  
24 Well, we need to show that Mr. Gonzales and the individuals  
25 that he worked with, not only in locations here in Texas, but

1 outside of the state and within Pipe Pros in general, were they  
2 similarly situated. And what does that mean? Well, do they  
3 share similar job duties? Do they do the same thing? Were  
4 they paid the same way? And I think that, not only through our  
5 briefing, our pleadings that are on file, Mr. Gonzales's  
6 Declaration, and also Pipe Pros' Response and their  
7 Declarations of nearly 35 current employees of Pipe Pros in  
8 several different job positions, I've got them listed here,  
9 field supervisor, floor hand, torque turn operator, torque turn  
10 tech, com operator, stabber, helper, and tripper operator, are  
11 the individual or positions that provided Declarations, along  
12 with Pipe Pro's Response, and what we have there is a  
13 confirmation that, regardless of where these individuals  
14 worked, regardless of what their job title was, and regardless  
15 of what they did, they were all paid the same way.

16 **THE COURT:** How were those all similar with respect  
17 to the Plaintiff in terms of duties?

18 **MR. ALEXANDER:** In terms of duties here --

19 **THE COURT:** Because I think when you came back, the  
20 Plaintiff on the Reply, and changed the scope of the class, I  
21 just don't see how everyone can be similarly situated to the  
22 Plaintiff.

23 **MR. ALEXANDER:** Okay. Your Honor, in response to  
24 that, what we've seen in a lot of these cases, that, you know,  
25 the evidence of a single decision, policy, or plan is what we

1 really need to look at in terms of a class-wide, you know, were  
2 they treated the same way. In terms of job duties, in terms of  
3 what they were doing, most, if not all, of these employees  
4 worked side-by-side on location together. They may have --

5 **THE COURT:** That's one thing where they may be  
6 similarly situated. I just wasn't sure, the way I read the  
7 proposed class is kind of everyone, regardless of title.

8 **MR. ALEXANDER:** Sure. And we can narrow that down,  
9 your Honor. Obviously, we don't want -- we don't --

10 **THE COURT:** It was a little tough, you all started  
11 out with operators and Defendant says we don't have operators,  
12 and I think that might be where an issue is if the class is  
13 certified, but --

14 **MR. ALEXANDER:** Sure.

15 **THE COURT:** -- go ahead.

16 **MR. ALEXANDER:** And, obviously, we don't intend to  
17 say that Mr. Edwards, for example, if he were paid this way  
18 would be an eligible class member. We can definitely narrow  
19 that down and say all non-managerial field personnel. I think  
20 we've done that in a similar case. I believe it was Thomas, et  
21 al v. High Capacity in front of Judge Libby, and which, as you  
22 recommended, we've entered that Order.

23 And so from a -- I guess what they do on a general  
24 basis, you know, they are not the exact same thing, but  
25 again --

1           **THE COURT:** And it doesn't have to be --

2           **MR. ALEXANDER:** Right.

3           **THE COURT:** -- but you have to have some  
4 similarities.

5           **MR. ALEXANDER:** Sure. And I think a lot of these  
6 folks, they're doing similar job duties, they're all working  
7 towards a common goal when they're out on a location. They may  
8 have, you know, a different job title. As the Court knows,  
9 that's not the test. I mean it's what are they doing and how  
10 are they getting paid. And more so than that is did this  
11 company make a kind of blanket class-wide decision to pay these  
12 people a certain way, and not only is it a certain way, salary  
13 plus the hourly job bonuses, but everyone's classified as  
14 exempt.

15           And so, you know, there's I think case law out there,  
16 the different Orders that have been entered, not only here, but  
17 throughout the Southern District and even Fifth Circuit, say,  
18 look, you know, if there is this evidence of a single kind of  
19 policy, decision, or plan, which we have here, then, at least  
20 for purposes of conditional certification, that's enough. And  
21 if we can -- if we go through discovery and we get to the  
22 decertification stage and Mr. Pipitone and his client want to  
23 file a motion to decertify, they're well within their right to  
24 do that and the Plaintiffs understand that there is a higher  
25 standard at that point, but for purposes of the first stage,

1 the notice stage, where we are now, you know, this kind of  
2 evidence of a single decision, policy, or plan, which Pipe Pros  
3 has, is enough for conditional certification to send out  
4 notice.

5 And just to add, you know, just in response to some  
6 of the arguments made in the response, and I'm sure will be  
7 made today in the hearing, is that, you know, there's numerous  
8 cases throughout the Southern District, this Court,  
9 Fifth Circuit, that this is not a numerosity, there is no  
10 numerosity requirement. This is a Rule 22 class action. We  
11 have one plaintiff, but that doesn't mean that we have to have  
12 more than one plaintiff to show that there are people that want  
13 to join.

14 This is not a merits case inquiry. There was a lot  
15 of briefing and a lot of argument in not only the Response, but  
16 the Sur-reply, that, well, these folks are exempt or they got  
17 paid the right way or stuff like that. Well, you know, again,  
18 that's not for us to talk about here today. That's down the  
19 line when we've engaged in significant discovery and  
20 discovery's almost over.

21 I have a feeling that Mr. Pipitone and his client are  
22 going to argue that, well, we had the opportunity to take  
23 discovery, but, again, that's not the test either. The test  
24 here is that, look, there is little to no discovery been taken.  
25 Mr. Gonzales was deposed. They sent out one set of discovery.

1 You know, there's not even -- there's not a scheduling order in  
2 place here. There's no deadline for discovery here.

3 There's -- you know, Plaintiffs are not required to engage in  
4 discovery before the Court rules on conditional certification.

5 And the last thing that I just -- I've not  
6 encountered this before, your Honor, and I thought it was very  
7 odd, that Pipe Pros' counsel, not only Mr. Pipitone, but  
8 Mr. Harvey and other attorneys within the firm, actively sought  
9 out potential class members, current employees at Pipe Pros,  
10 and met with them outside of the presence of anybody else,  
11 including myself. And, you know, I have no idea what they were  
12 told, but at some point they were convinced to give a  
13 declaration in support of Pipe Pros' arguments. And, you know,  
14 going forward I think I'd like to have an opportunity to talk  
15 to each and every one of those people to find out exactly what  
16 they were told, to find out if they received accurate  
17 information, if they were intimidated in any way to not join  
18 the class -- excuse me -- to join the case.

19 Because I will say, your Honor, we do this quite a  
20 bit. We have quite a few wage and hour cases, not only in  
21 front of this Court, but others, and this has never happened to  
22 us and I think it's very -- it borderlines on ex parte  
23 conversations and, you know, we feel it's improper at this  
24 stage.

25 And I'm sure, your Honor, you're aware that in



1 previous cases we've had a very similar, if not identical,  
2 class conditionally certified. In Lopez, et al v. Allis-  
3 Chalmers Energy Inc., 2:11-CV-353 -- and my understanding, if  
4 my memory holds true, is that Mr. Edwards was actually a  
5 district manager with Allis-Chalmers and then Archer before he  
6 went to Pipe Pros. And, while we have a somewhat different  
7 classification issue in Allis-Chalmers, it's a very similar, if  
8 not identical type of company, in what they do, in the people  
9 they employ. I think if you look at some of the Declarations  
10 there's, in fact, a lot of former Allis-Chalmers and Archer  
11 employees that went to work for Pipe Pros, along with  
12 Mr. Edwards, and they shared the same job titles, the same job  
13 duties, and the same kind of misclassification, or at least  
14 treatment of being classified as exempt employees paid on  
15 salary plus a job bonus pay structure and no overtime.

16 And again, going back to 2:11-CV-353, in Mr. Lopez's  
17 case, Docket 92 is where we had a class definition or  
18 conditional class certification and those went out to coil  
19 tubing operators, laydown operators, laydown assistants,  
20 service techs, mud tool hand, hammer techs, shop hands, fill-up  
21 tool operators, dispatchers, drivers, district administration  
22 workers, and pushers, which were also known as field  
23 supervisors or service supervisors, casing floor hands,  
24 stabbers, and tong operators. And again, looking back at the  
25 Declarations that Pipe Pros provided in their response, these

1 are identical job titles, these are identical job positions,  
2 and they were paid the same way that we dealt with in that  
3 case, or at least with a certain subclass of that case.

4 So, your Honor, again, through our briefing, through  
5 our pleadings, our affidavits on file, I think the evidence  
6 also from Pipe Pros is that we have met our conditional  
7 certification burden, which again at the notice stage is a very  
8 lenient burden.

9 **THE COURT:** All right.

10 **MR. ALEXANDER:** Thank you, your Honor.

11 **THE COURT:** Thank you.

12 Mr. Pipitone?

13 **MR. PIPITONE:** May it please the Court. Judge, I may  
14 rattle on a little bit longer than Mr. Alexander did, with the  
15 Court's permission.

16 The first thing I'd like to point out is this Lopez  
17 case that Mr. Alexander just referred to the Court to. I was  
18 not involved in that case. I don't know nearly as much about  
19 it as Mr. Alexander probably does and your Honor does. But one  
20 thing I do know is that in Lopez the defendants argued simply  
21 the application of one exemption. And here in our case with  
22 Pipe Pros we're offering the possibility of our different  
23 exemptions, all of which would require individual scrutiny by  
24 the Court as to whether each of the employees qualified under a  
25 particular exemption or not. Because all employees, as

1 Mr. Alexander now has expanded the class to include, all  
2 employees would include Mr. Edwards, who is an employee of the  
3 company. It would include sales people.

4 **THE COURT:** We're not going to all employees. I  
5 think that wasn't clear from my discussion with the Plaintiff.  
6 I think that's too broad.

7 **MR. PIPITONE:** All right. And, your Honor, just so  
8 you're aware, even with tong and tripper operators, some  
9 different exemptions may apply because some of them have sales,  
10 outside sales requirements, some are managerial, and some even  
11 may qualify under the Motor Carriers Act exemption. So each of  
12 them would even require an individual examination by this Court  
13 as to whether or not exemption applies.

14 But I got a little bit off what I had planned on  
15 saying to your Honor. The first thing I really wanted to talk  
16 about was the fact that so many times the focus is upon  
17 plaintiffs in these types of cases. The fact is for every type  
18 of case. I've practiced law now for 36 years and I've  
19 predominately represented defendants and it's always surprised  
20 me that the focus is always upon the plaintiffs, even though  
21 the defendants are made up of people, in this case Mr. Edwards  
22 and Mr. Armando Valdez are the owners of Pipe Pros, they have  
23 assumed great risks to start their company. More risk than any  
24 Plaintiff in this case would bear, because they've assumed the  
25 risk of the oilfield going the way it has in the last few

1 months, most of this year and part of last year. So they've  
2 assumed great risks. A great number of employees rely upon  
3 these people, yet they're never perceived to be the victim in  
4 these cases and the way these laws are stacked up, and the  
5 Fair Labor Standards Act especially, sometimes they feel as  
6 though they're impotent to do anything. These class actions  
7 start and there's so little they can do to stop them.

8           And I just would like the Court to take a -- just  
9 focus upon a little bit too the plight of the defendants,  
10 because sometimes they can be put into such dire straits that  
11 their business can be affected dramatically. And it's not just  
12 the owners that are affected, Judge, it's all the employees  
13 that work for them. And in this case we have at least  
14 34 people who are absolutely thrilled with their compensation  
15 package, which they believe to be legal, fair, and it provides  
16 them with some reliability of income.

17           **THE COURT:** Okay. And I get that.

18           **MR. PIPITONE:** Okay.

19           **THE COURT:** The law is fairly lenient at this stage  
20 one. And people can be thrilled with their wages and all, but  
21 that doesn't mean they're compliant with FLSA requirements.

22           **MR. PIPITONE:** Right.

23           **THE COURT:** So I get it --

24           **MR. PIPITONE:** Okay.

25           **THE COURT:** -- it's just the law is what it is.

1           **MR. PIPITONE:** And I appreciate that, your Honor, so  
2 let me move on. That's -- I just didn't want to lose sight of  
3 the defendants' plight and the fact that they can be a victim  
4 in these cases, more than some perception that an employer  
5 abuses an employee by not paying overtime or mischaracterizing  
6 them.

7           **THE COURT:** In a lot of the cases we do deal with in  
8 the FLSA context the employees are getting paid very well, but  
9 that's not the question for the Court.

10           **MR. PIPITONE:** Well, it could be a question  
11 ultimately, though, if they're highly compensated employees.  
12 And most of the people that work at Pipe Pros are in that  
13 hundred thousand dollar, a hundred thousand dollars per year  
14 group where they could be considered highly compensated. Which  
15 will require more scrutiny by this Court as to individually  
16 whether they would qualify under that exemption or not.

17           But I'll move on to the issues here at hand. And the  
18 one question that exists in a -- the notice stage, and in  
19 Lusardi there's two stages, the notice and decertification  
20 notice stage. The Lusardi Court also referenced a third  
21 question. They talked about similarity and the other things,  
22 but the third question that they talked about, your Honor, was  
23 whether there was an indication that there are other  
24 individuals willing to join the class. And it was incumbent  
25 upon the plaintiff, it's the plaintiff's burden to establish to

1 the Court that there are other people interested in joining the  
2 class.

3           **THE COURT:** Okay, and let me just butt in right here,  
4 because I did not see that in the briefing. Is that -- I know  
5 you said there's no numerosity required, but some Courts do  
6 require at least one or some interest or some showing. And  
7 maybe I went through this a little too quickly, but was that  
8 set out?

9           **MR. ALEXANDER:** Your Honor, I'm not sure if we set it  
10 out too much in our briefing. I will represent to the Court  
11 that Mr. Gonzales is a former employee who left the company  
12 almost nine months ago, eight months, I believe. So, you know,  
13 he doesn't have -- he has very little to no contact with these  
14 folks. I'm sure Mr. Pipitone will bring up the fact that  
15 somebody reached out a few years ago, Mr. Gonzales reached out  
16 to some of his former coworkers, and those folks, specific  
17 individuals, were not interested.

18           But again, you're right, your Honor, we don't have a  
19 numerosity requirement here. And what I'd add on that is that,  
20 again, we already have evidence that counsel has gone and  
21 spoken about this case to current employees. We are unaware if  
22 they've spoken to former employees as well. And again, I have  
23 no idea what they've been telling these people, whether it's  
24 accurate, whether there's been any type of discouragement from  
25 joining the class. I don't know.

1           But it terms of whether or not we have briefing on  
2 the number of individuals, no, your Honor, Mr. Gonzales is the  
3 one sole opt-in at this moment. I will represent to the Court  
4 that we have talked with other individuals who are likely to  
5 opt-in very soon.

6           **THE COURT:** All right, thank you.

7           Mr. Pipitone?

8           **MR. PIPITONE:** And, your Honor, if I can, let me  
9 address just one comment that's come up now twice. Pipe Pros  
10 is permitted to talk to their employees. There is no class  
11 right now. There is nothing illegal, nothing wrong, nothing  
12 unsavory about us talking to our employees.

13           If Mr. Alexander truly has a concern that these  
14 34 declarants were forced into signing these declarations and  
15 weren't happy campers, as he referred to them, they had four  
16 and a half months to take their depositions, your Honor. So I  
17 don't necessarily appreciate that reference to the fact that  
18 Pipe Pros or its attorneys would in any way coerce the  
19 declarants to make statements.

20           Going back, though, to the third requirement in  
21 Lusardi that people have to -- that the plaintiff has the  
22 burden of showing that there's an interest in joining the suit,  
23 your Honor, what I would like to do, if I may, I would like to  
24 provide the Court with a copy of the McKnight Opinion and also  
25 excerpts from Mr. Gonzales's deposition.

(Documents tendered to the Court)

And, your Honor, if I could, the McKnight Opinion was written by Judge Rosenthal in the Houston Division of this District and is dated November 18th of 2010 and if I could direct the Court to Page 13. There are certain areas that are highlighted there and it starts out on the top on the left side, and this is, obviously, from the Southern District of Texas as recent as five years ago, "The third Lusardi question is whether evidence shows that other aggrieved employees want to join the class."

So there is a requirement, there is a burden on the Plaintiff to show that other employees are interested in joining the class.

A plaintiff -- the case goes further to say:

"A plaintiff must do more than show the mere existence of other similarly situated persons, because there is no guarantee that those persons will actually seek to join the lawsuit."

It goes on to say, too, your Honor:

"Affidavits from potential class members affirming their intention to join the suit are ideal."

It also goes on to say:

"Affidavits are advisable so an employee will not be -- excuse me.

"Affidavits are advisable so an employer will not be



1 unduly burdened by a frivolous fishing expedition  
2 conducted by a plaintiff at the employer's expense."

3 It goes on to say as well, your Honor:

4 "Plaintiff may submit some other form of evidence  
5 that the additional aggrieved persons exist and want  
6 to join the suit.

7 "A District Court should satisfy itself that are  
8 other employees who desire to opt-in and who are  
9 similarly situated with respect to their job  
10 requirements and with regard to their pay provisions.

11 "An FLSA plaintiff is not entitled to conditional  
12 certification simply to seek out others who might  
13 wish to join the action."

14 So that is the law, at least as Judge Rosenthal wrote  
15 five years ago, that's applicable here in this District.

16 And, your Honor, the other thing I would like to  
17 point out to you is I've given you the Plaintiff's deposition  
18 transcript and we don't need to go through all of this, but let  
19 me explain to you briefly what's happened here. At one point  
20 Mr. Gonzales, the Plaintiff in this case -- excuse me -- did  
21 try to reach out to employees of whom he was aware. And in his  
22 deposition, your Honor, on Page 10, Line 17, he said that he  
23 sent out this text message to 20 people, perhaps more, and in  
24 this text message he said:

25 "Hey, I've brought a suit against Pipe Pros. All you

1           have to do is opt-in to get your money. I've talked  
2           to Mr. Alexander's law firm. Call me and we can get  
3           you signed up to be in this lawsuit."

4           So he was actively soliciting 20 or more employees to  
5           join this lawsuit.

6           **THE COURT:** Out of how many possible employees?

7           **MR. PIPITONE:** I'm sorry, your Honor?

8           **THE COURT:** Twenty out of how many employees?

9           **MR. PIPITONE:** You know, your Honor, I can't give you  
10          a total amount of employees, but I could ask Mr. Edwards, if  
11          that would be helpful.

12          **THE COURT:** Yeah, just an estimate. I don't know how  
13          many work there.

14          **(Mr. Pipitone confers with Mr. Edwards)**

15          **MR. PIPITONE:** There's about 35 employees that work  
16          there now.

17          **MR. ALEXANDER:** Your Honor --

18          **MR. PIPITONE:** I'm not sure how many worked there in  
19          the past.

20          **THE COURT:** You can respond in a little bit.

21          **MR. PIPITONE:** I'm not sure how many worked there in  
22          the past.

23          **(Mr. Pipitone confers with Mr. Edwards)**

24                 We can come back to the Court on that.

25                 But here is the important part, your Honor. Not only

1 has the Plaintiff failed to meet his burden in showing this  
2 Court that there are other people that are interested in  
3 joining this lawsuit, he's actually provided testimony to the  
4 opposite. In essence, if you look, Judge, on Page -- the last  
5 page of the submission I've given you, your Honor, Page 25,  
6 you'll see where it's highlighted at the very bottom:

7 "Do you know of anyone --

8 This includes the 20 or more people that he's tried  
9 to contact.

10 "Do you know of anyone who has indicated any interest  
11 whatsoever in joining you in your lawsuit against  
12 Pipe Pros?"

13 And his answer is "I do not know."

14 So, your Honor, not only does he not meet his burden,  
15 he goes one step further and assists Pipe Pros in proving  
16 through his own testimony that he doesn't know of anyone who's  
17 interested in the least in joining this lawsuit after he  
18 solicited 20 people or more.

19 Your Honor, I'd like to just digress for a second,  
20 because in Mr. Gonzales's Declaration that was attached to his  
21 motion, which is the only evidence that the Plaintiff submits  
22 in support of his motion, but in that Declaration, Judge,  
23 Paragraph 21, he says in his Declaration that he has personal  
24 knowledge that there's other operators interested in joining.  
25 Now, the rest of the Declaration is pretty much boilerplate

1 language, but I want to point out that Paragraph 21 of the  
2 Declaration is totally opposite, totally inconsistent with  
3 Mr. Gonzales's sworn testimony during the course of his  
4 deposition. Which, in my mind, and hopefully in the Court's  
5 mind as well, places some question as to the reliability of his  
6 Declaration in the first instance.

7           And if the Declaration isn't reliable, your Honor,  
8 there is absolutely no evidence that the Plaintiff has  
9 submitted that supports his Motion for Conditional Class  
10 Certification. No evidence of any kind about similarly  
11 situated or anything else.

12           So, your Honor, I think, based on the McKnight  
13 Opinion and Lusardi, the third question in Lusardi, there is no  
14 interest on anyone's behalf that the Plaintiff can show this  
15 Court that anyone would be interested in joining this class.  
16 And I think on that reason and that reason alone your Honor is  
17 perfectly permitted with your discretion to enter -- to reject  
18 the motion and reject the possibility of a class.

19           The second thing I'd like to talk to the Court about,  
20 and this is if -- even if your Honor gets past that point,  
21 which hopefully doesn't occur, but I do want to talk about the  
22 fact that there is a more stringent standard that should be  
23 applied here in this case.

24           This case was filed in January of this year. It's  
25 been in existence now for some eight months. We answered in

1 the very first of March. The Joint Discovery Case Management  
2 Plan with the preceding Rule 26 meeting occurred on April 1st,  
3 2015. So there's been four and a half months to conduct  
4 discovery. And, your Honor, the Defendants have conducted  
5 discovery. We've sent written discovery propounded on the  
6 Plaintiff, got answers, went ahead and took the Plaintiff's  
7 deposition.

8 But I went one step further, Judge. On June 19th,  
9 roughly a week or so after the Plaintiff's deposition, I  
10 actually sent a letter to Mr. Alexander saying, look, we offer  
11 you any type of discovery you want. Anybody you want to  
12 depose, we'll produce them for you. We encourage you to take  
13 depositions. We encourage you to do whatever discovery you  
14 feel like you need to do. But nothing has occurred.

15 So, your Honor, I do propose -- and there's cases  
16 cited in our briefs that talk about applying the more stringent  
17 standard that would be applicable in a decertification process.  
18 One of those cases says that three months for the opportunity  
19 to do discovery is sufficient, and here we have four and a  
20 half, slightly -- well, almost four and a half months to do so.  
21 So I would hope that the Court would apply the more stringent  
22 standard and require more evidence from the Plaintiff for the  
23 class certification.

24 Your Honor, we already talked about the all operators  
25 versus the tong and tripper operators change. What I really

1 would then point out to the Court is, once again, that the  
2 burden is upon the Plaintiff, that he has not been able to  
3 show, by his own testimony that's pointed out in our briefs,  
4 that the whole class that he proposes is similarly situated.  
5 He simply isn't in a position to do that because he doesn't  
6 even know the nature of the other work that other employees of  
7 Pipe Pros do. And he said that clearly during the course of  
8 his deposition.

9           So how can the Plaintiff propose a class when he  
10 doesn't even really know what the class would be comprised of?  
11 He doesn't know its composition. He doesn't know the different  
12 job duties of the sales people, the truck drivers, even the  
13 people that work out in the field at the various rigs. He  
14 simply doesn't know. And, moreover, more importantly for  
15 purposes of this hearing, he hasn't presented any evidence,  
16 Judge. It's one thing for Mr. Alexander to say that which he  
17 wishes. But there's no evidence before this Court, other than  
18 a Declaration of the Plaintiff, which we already have shown in  
19 one particular provision is inaccurate, is false.

20           So the Plaintiff has not met his burden.

21           On the other hand, your Honor, we've put in  
22 34 different Declarations from various employees that work  
23 here. They all talk about having different job duties. They  
24 talk about different functions they perform. They talk about  
25 different geographical areas. There's eight different states

1 that Pipe Pros operates in. Louisiana, Texas, Arkansas, all  
2 the way up to Pennsylvania, just to name a few. And in each  
3 situation there are different responsibilities that they have.

4 And, Judge, I'd point out one other case to you.  
5 It's the Tolentino case that Judge Jack decided. When she had  
6 a service company, much like Pipe Pros, when the employees were  
7 involved in fracking wells or cementing in different wells, she  
8 said -- Judge Jack said that the various job functions were so  
9 disparate that you couldn't make a class out of them. And  
10 that's the Tolentino Opinion that Judge Jack wrote and that was  
11 in 2010. She said they just simply weren't similarly situated  
12 as a consequence of the different job responsibilities that  
13 they had.

14 So not only can the Plaintiff not even name the  
15 different job functions, he certainly can't describe them.

16 But what's really important to this Court, Judge, is  
17 the whole idea of a class is so that you have everybody that's,  
18 not identical, but certainly similarly situated in such a way  
19 so that the Court doesn't have to engage in an individual  
20 analysis. And that's not possible here because most of these  
21 employees are doing different things under different  
22 guidelines, different policies, different job functions that  
23 they're performing. Whether they are exempt under a myriad of  
24 different exemptions, administrative, managerial, outside  
25 sales, Motor Carriers Act, highly compensated, your Honor's

1 going to have to say at some point during the trial in this  
2 matter, all right, he gets the MCA exemption, she gets the  
3 administrative exemption, he might qualify for the outside  
4 sales exemption, and those types of decisions are going to have  
5 to be made by the Court on an individualized basis based on the  
6 facts of this case. And the class obviously isn't -- the  
7 concept of having a class action or a collective action isn't  
8 served, judicial economy is not served, judicial efficiency is  
9 not served because of the disparate nature of all these  
10 employees and the nature of the work that they're doing.

11           Lastly, your Honor, Mr. Alexander talked in terms of  
12 a single policy. You know, the single policy, and we said this  
13 in our brief and cited some cases to it, the fact that they  
14 weren't paid overtime, some employees weren't paid overtime,  
15 that's not the single policy that's really applicable here.  
16 The policies are this, Judge: Pipe Pros applied a myriad of  
17 different exemptions, five different exemptions, to some of  
18 their employees to determine whether they were entitled to  
19 overtime or not. The ones that were exempt didn't get  
20 overtime. The ones that were not exempt did get overtime. And  
21 so Pipe Pros went through that analyses for all of their  
22 employees using all of the exemptions possible and so those are  
23 the policies. There's not just one single policy, there's a  
24 number of policies that Pipe Pros employed.

25           **THE COURT:** There might be a single policy regarding



1 a certain group of workers who maybe do a similar type of job.

2           **MR. PIPITONE:** And let me address that, your Honor,  
3 because if you focus upon the tong and tripper operators that  
4 Mr. Gonzales first referenced, because that's the only jobs  
5 that he did and those are the only jobs which he was aware of  
6 their functions, even the tong and tripper operators could be  
7 different. It will require an individual analysis as to  
8 whether the exemptions apply. Because some tong and tripper  
9 operators supervise other people. Some tong and tripper  
10 operators actually drove motor vehicles that weighed more than  
11 10,001 pounds and drove them interstate, so the MCA,  
12 Motor Carriers Act, exemption might apply. Some were  
13 responsible for some outside sales. So there will still be,  
14 even with that class, if your Honor goes with such a narrow  
15 class as tong and tripper operators, even that class will  
16 require some individualized assessments, analyses, as to  
17 whether the exemptions apply or not.

18           So, your Honor, I just -- there seems to be a moving  
19 target here as to what the class is or proposed to be or may or  
20 may not be. You know, I came in prepared for the all employees  
21 class. I hope I've answered your questions on even the smaller  
22 class of tong and tripper operators.

23           One thing I may do, with your Honor's permission,  
24 I'll ask Mr. Edwards how many employees might have existed back  
25 in 2013.

1           **(Mr. Pipitone confers with Mr. Edwards)**

2           So perhaps a hundred at the most, your Honor, is what  
3 Mr. Edwards is thinking, just, you know, off the cuff.

4           **THE COURT:** All right.

5           **MR. PIPITONE:** Thank you, Judge.

6           **THE COURT:** I think, Mr. Alexander, we do need to --  
7 I know it's a very light minimal burden regarding if there is  
8 others who want to join, but that is what the cases say. And  
9 usually there is something, whether it's an affidavit or --  
10 even if it's one, some of the cases say one is sufficient,  
11 someone showing an interest or that they may want to join or  
12 someone else and just -- and sometimes I miss it in the  
13 evidence, but I'll usually catch it if it's in the briefs.  
14 Sometimes you all attach a lot of evidence and I skim through  
15 the evidence a little bit quicker. So -- and I think that's a  
16 problem, so I want everyone to address that first.

17           **MR. ALEXANDER:** Sure, your Honor, if I may respond.  
18 I'll point the Court to a few other Southern District cases.

19           **THE COURT:** Because I think this very Court has held  
20 that in the past and I'm trying to be consistent.

21           **MR. ALEXANDER:** Sure. If you look at one of  
22 Judge Atlas's Opinions, Villatoro v. Kim Son Restaurant out of  
23 2003, a case, I don't know, it's 286 F.Supp.2d 807 and the  
24 pertinent language is at 810/811. And there Judge Atlas  
25 conditionally certified a class with a single declaration and,

1 important to this case, employer documents showing that there  
2 was this kind of over-arching single decision, policy, or plan.  
3 And not just because that Pipe Pros said that these guys are  
4 exempt or that they didn't get paid overtime, not only do we  
5 have that, but the conditional class that we're looking to --  
6 or, excuse me, the class that we're looking to conditionally  
7 certify is these individuals, these non-managerial positions  
8 that were paid on the same way, salary plus an hourly job  
9 bonus --

10 **THE COURT:** They still have to be similarly  
11 situated --

12 **MR. ALEXANDER:** Sure.

13 **THE COURT:** -- to the employee. It's got to be the  
14 type of work he does. And it doesn't have to be identical. I  
15 think that's where the rub would be if we certified this, you  
16 know, Defendants wanting to narrow it, Plaintiffs wanting to  
17 enlarge it a bit. But I don't think you can talk or represent  
18 everybody who may not have been paid properly. They have to be  
19 similar situated to him, so he can speak about it.

20 **MR. ALEXANDER:** Sure, and --

21 **THE COURT:** Or know about it.

22 **MR. ALEXANDER:** Well, I think, you know, whether --  
23 whereas Mr. Pipitone refers to the credibility of  
24 Mr. Gonzales's Declaration or his deposition testimony, he at  
25 least knows at a minimum about the conditions that he worked in

1 and that being a tong and tripper operator position. They were  
2 all paid the same way, worked in eight different states, as  
3 they represent, and they weren't paid any differently. At a  
4 minimum, your Honor.

5 But I also think that by working side-by-side with  
6 these individuals on site at different jobs, knowing in general  
7 what they do. I mean he knows what a coil tubing operator  
8 does.

9 **THE COURT:** Right, but like who are we talking about?  
10 And I don't how they're classified. Obviously (indiscernible)  
11 we don't have operators, but, you know --

12 **MR. ALEXANDER:** Sure.

13 **THE COURT:** -- who are these people I guess is  
14 what --

15 **MR. ALEXANDER:** Well, in looking back at Pipe Pros,  
16 the Declarations they provided from the current employees,  
17 those different job titles, stabbers, tong operators, tripper  
18 operators, torque turn operators, field supervisors, tool  
19 hands, floor hands, all these same people that were certified  
20 in the Allis-Chalmers case is the almost identical setup of  
21 Pipe Pros. It's the same type of company, if not identical, on  
22 a smaller scale. But same operations, same exemption  
23 classification, or in our view misclassification.

24 And so that's what these folks do. There's coil  
25 tubing operators, again there's floor hands, stabbers, tong and

1 tripper operators, torque turn assistants, torque turn  
2 operators, there's a myriad of different job titles, if you  
3 will, your Honor, but a lot of these people are doing very  
4 similar job duties in the sense that they're all working  
5 towards a common goal to get a well completed in the ground and  
6 producing for an operator. That's Pipe Pros' business.  
7 They're a service company. They help service the well to get  
8 the operator online. Not only setting up, but drilling and  
9 production of the well. They may have different job positions  
10 and job titles that perform those duties, but they're all paid  
11 the same way. At least what we're asking for in this initial  
12 certification is the salary plus the hourly job bonuses that  
13 did not receive overtime.

14 To borrow a phrase from the Defendants, I feel like  
15 what we're doing here is that the Defendants are trying to jump  
16 the shark. We're going into a merits-based discussion of  
17 exemptions and individual analyses that are -- they may well  
18 exist in the future, your Honor, after discovery is largely  
19 complete --

20 **THE COURT:** I agree to a large extent that's not  
21 appropriate for now. Because I've had other FLSA cases, in  
22 fact one where you were involved where summary judgment issues  
23 were addressed regarding some exemptions and we let a portion  
24 of the class members, I dismissed them based on some  
25 exemptions. But I agree, that's not for me to start going

1 through right now.

2           **MR. ALEXANDER:** Sure. Your Honor, I'd like to point  
3 the Court's attention, since it's a very recent ruling from  
4 your Honor, if you look at the Sherwin Alumina case, those  
5 individuals, a potential class size of I think four to five  
6 hundred people, and very different job titles doing different  
7 things for different contractors and for different companies  
8 within the Sherwin plant over in Gregory, but what we argued  
9 and what your Honor considered and ordered was that, look,  
10 these people were all paid the same way, the pay frame was the  
11 same way. They weren't receiving -- or at least the  
12 allegations were they were not receiving a certain pay and the  
13 allegation was that that was -- that should have been included  
14 in the pay rate, because these folks even received overtime but  
15 what we were saying there was that, you know, hey, you didn't  
16 do the regular rate for everybody. And there were probably 15  
17 different positions there that did arguably different tasks,  
18 but the end goal, you know, they're working towards the same  
19 product that Sherwin Alumina produces.

20           And I think that's what we have here, your Honor,  
21 with Pipe Pros. These guys may be doing different job tasks  
22 and different assignments and sometimes --

23           **THE COURT:** And I think both of you all were involved  
24 in one, we dealt with something similar to this where depending  
25 on the company man or what job site they were on, et cetera,

1 they might be treated differently, but the Court said I think  
2 for purposes of this first stage I allowed it to go forward.

3 But I'm still -- and I'm going to go back to this,  
4 I'm not seeing the evidence about others wanting to join before  
5 the Court, which I think is fatal at this point. Because we  
6 can keep arguing about the others, but if we don't have that  
7 third question, or however you want to phrase it -- and it is  
8 really light and minimal, but I'm just not -- I know that  
9 Plaintiff stated that he knew some people in the Declaration,  
10 but he specifically says in his deposition that he doesn't know  
11 of anyone else. And there might be someone later, you know, I  
12 don't know, may change the situation. I just don't see it now  
13 before the Court.

14 **MR. ALEXANDER:** And I think that is one of the  
15 difficulties, you know, certainly when you have a single  
16 plaintiff case, your Honor, especially with somebody that  
17 hasn't worked there for a long time. Whether there are -- you  
18 know, I think he reached out to -- and I disagree with the  
19 classification of him contacting 20 people. That was the  
20 objection I wanted to lodge earlier. I think that misstates  
21 Mr. Gonzales's testimony. There was -- the evidence provided  
22 in the deposition in the response is that he texted a handful  
23 of people.

24 And beyond that, you know, you're right, there may be  
25 other people out there that, honestly, they don't know about

1 this lawsuit and certainly would like to join it. And I think  
2 that's the purpose of sending out a notice saying --

3 **THE COURT:** It is, but as light and minimal as the  
4 burden is, you do have to meet certain things and I don't see  
5 where there is evidence of others wanting to join.

6 Now, all these other arguments, you know, that the  
7 Defense is making, I agree in terms of trying to condense the  
8 class, you know, I'll just -- if there was evidence of others  
9 wanting to join, I'd be sitting here hashing out what kind of  
10 class we're going to have because I think they've met their  
11 light burden. I'm not going to apply a more stringent burden  
12 here or standard here. But without that, something showing  
13 someone else is interested in joining this, I don't think you  
14 get there.

15 **MR. ALEXANDER:** And, your Honor, just to clarify, is  
16 that for the class-wide or is that for just --

17 **THE COURT:** Anybody.

18 **MR. ALEXANDER:** -- anybody?

19 **THE COURT:** I didn't see evidence of anyone wanting  
20 to join the suit. And, you know, there are a couple of cases  
21 out there, several of the Judges in the Southern District hold,  
22 you know, it's pretty minimal, one person or whatever it is,  
23 but you have to have something. I know there is a couple of  
24 cases maybe outside the District, or maybe within, that say  
25 that's kind of putting the cart before the horse. But I in the



1 past stated you need to show something, because I do think  
2 Judge Rosenthal set it out correctly here, based on what we  
3 rely on these cases, and I have followed that before, requiring  
4 something, and I don't see it. So --

5 **MR. ALEXANDER:** Your Honor, would there be -- and  
6 just to kind of piggyback on one of your Honor's comments about  
7 if there were another person, as we talked about earlier, we've  
8 been in contact with other individuals who have expressed an  
9 interest in joining and we're in the process of getting a  
10 consent form from them we can file with the Court. Would there  
11 be --

12 **THE COURT:** Well, I mean like I would deny it without  
13 prejudice, because I don't want to be in a position later where  
14 I have ten separate lawsuits that really should have been  
15 together.

16 **MR. ALEXANDER:** Sure.

17 **THE COURT:** So I mean it's something I would  
18 reconsider later if it's appropriate. But I just don't see it  
19 right now.

20 Mr. Pipitone, do you want to make any comments?

21 **MR. PIPITONE:** Your Honor, I would. On that last  
22 thing that Mr. Alexander said, that concerns me greatly,  
23 because he stood here a little while ago and accused -- I don't  
24 know if accused is the right word, suggested perhaps, that  
25 something untoward had happened by us talking to our own

1 employees, yet he just mentioned that he has been in contact  
2 with some former employees who haven't approached him. So I  
3 worry about contact with former employees or even current  
4 employees and I would like --

5 **THE COURT:** But Plaintiff is free to do that. Just  
6 as, you know, you all can talk to your employees before the  
7 Court issues any sort of order.

8 **MR. PIPITONE:** Okay.

9 **THE COURT:** I mean I don't think there's anything  
10 prohibiting a plaintiff from reaching out to coworkers.

11 **MR. PIPITONE:** Okay.

12 **THE COURT:** I mean I think there's case law on that.

13 **MR. PIPITONE:** And, your Honor, I don't mind if it's  
14 Mr. Gonzales that does that and I certainly, I don't have a  
15 quarrel with it.

16 **THE COURT:** Did you want to say something?

17 **MR. ALEXANDER:** Yes, your Honor, I would just like to  
18 point out that these individuals have contacted my office and  
19 I have not contacted anyone.

20 **MR. PIPITONE:** One other thing too, your Honor, and  
21 not to belabor this point, but in our brief, Mr. Alexander made  
22 the comment that Mr. Gonzales worked alongside people and  
23 therefore knew what their job functions were to argue for the  
24 broader class, in our brief on Pages 11, 12, and 13 we've put  
25 in excerpts of the Plaintiff's deposition testimony where he

1 said, "I don't have any idea who would be in this class beyond  
2 tong and tripper operators." And it's in the Plaintiff's own  
3 deposition testimony, so --

4 **THE COURT:** Well, that would kind of get if we get to  
5 the next phase --

6 **MR. PIPITONE:** Right.

7 **THE COURT:** -- as to the class. What he knows, who  
8 might be similar to him, I mean that's what the Court has to  
9 look at to see if he would be the appropriate representative or  
10 if he just proceeds individually.

11 So at this point the Court's denying the Motion to  
12 Certify the Class based on the evidence before the Court.

13 Anything further from the Plaintiff?

14 **MR. ALEXANDER:** No, your Honor. Just the fact if we  
15 do have additional individuals that sign up that we can come  
16 back.

17 **THE COURT:** You can always re-urge your motion, ask  
18 the Court to reconsider it. I mean it all goes to the  
19 efficiency of the process, so you can certainly file something  
20 else.

21 **MR. ALEXANDER:** Thank you, your Honor.

22 **THE COURT:** Anything else from the Defense?

23 **MR. PIPITONE:** Yes, your Honor. Then in that case,  
24 can we go ahead and set up some sort of a schedule for  
25 discovery and so forth and so on?

1           **THE COURT:** We can enter a Scheduling Order.

2           Brandy, do you want to...

3           **(Clerk confers with Court)**

4           **THE COURT:** What are we looking at in terms of a  
5 trial date? What month?

6           **MR. PIPITONE:** Somewhere in the Spring would be fine  
7 or even, you know, later this Fall would be fine.

8           **MR. ALEXANDER:** If you would, your Honor, I'd like to  
9 have some time to look at my calendar and go over --

10          **THE COURT:** Okay, just because we give you a trial  
11 date and then we give you to Judge Martin, so we are usually  
12 setting them out about ten months, right, from -- so what are  
13 we looking at?

14          **MR. ALEXANDER:** June to start.

15          **MR. PIPITONE:** If your Honor gives us a trial date,  
16 then Mr. Alexander and I can confer about the dates and get  
17 those together --

18          **THE COURT:** We'll give you a Scheduling Order. If  
19 you have issues with the deadlines, you can get with Brandy.  
20 But we -- everything is triggered from the trial date.

21          So what do you have, Brandy?

22          **THE CLERK:** Your Honor, in June of 2016 the trial  
23 date would be June 13th, 2016. The first set of deadlines  
24 would be on December 1st (indiscernible)

25          **THE COURT:** Okay. Do you want to give them a copy.

1           **MR. PIPITONE:** Thank you very much, Judge.

2           **THE COURT:** You're welcome.

3           **MR. ALEXANDER:** Thank you, your Honor.

4           **THE COURT:** Yes.

5           **(Clerk confers with counsel)**

6           **MR. PIPITONE:** Your Honor, these are no problem for  
7 me whatsoever. I totally agree with them.

8           **THE COURT:** Okay. How's that for you?

9           **MR. ALEXANDER:** At first glance it looks fine,  
10 your Honor.

11           **THE COURT:** All right. I'm going to go ahead and  
12 enter that Scheduling Order and you can be excused.

13           **MR. PIPITONE:** Thank you, Judge.

14           **MR. ALEXANDER:** Thank you.

15           **(This proceeding was adjourned at 10:49 a.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

Signed

October 5, 2015

Dated

*TONI HUDSON, TRANSCRIBER*